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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,398	01/05/2004	Christopher N. Gab	3172 PUS	3585
7590 Konstantine J. Diamond 4010 E. 26th Street Los Angeles, CA 90023		05/09/2007	EXAMINER AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER 3637
			MAIL DATE 05/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/752,398	GAB, CHRISTOPHER N.
	Examiner Timothy M. Ayres	Art Unit 3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 March 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 and 5-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 5-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The pallet being nestable is recited in claim 1.

### ***Claim Rejections - 35 USC § 102***

2. Claims 1-3 and 5-18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent Publication 2001/0029874 to Muirhead. Muirhead teaches a pallet (4a) comprising a deck (14) with an upper surface (62) and a plurality of supports (12) extending downward from the deck. The deck includes a plurality of openings (64) for receiving the supports of a similar pallet. At the rounded corner edge (20) there are two projections that can be considered to be the at least one projection. First is the projection (200a) that extends outwardly in the vertical direction and is used to hold shrink-wrap (Page 9, paragraph 86). Second, as seen in figure 5 below, the deck includes triangular projections surrounding the edge extending in a horizontal plane outward, thereby the one (A') at the rounded corner is considered the at least one projection.

FIG 5

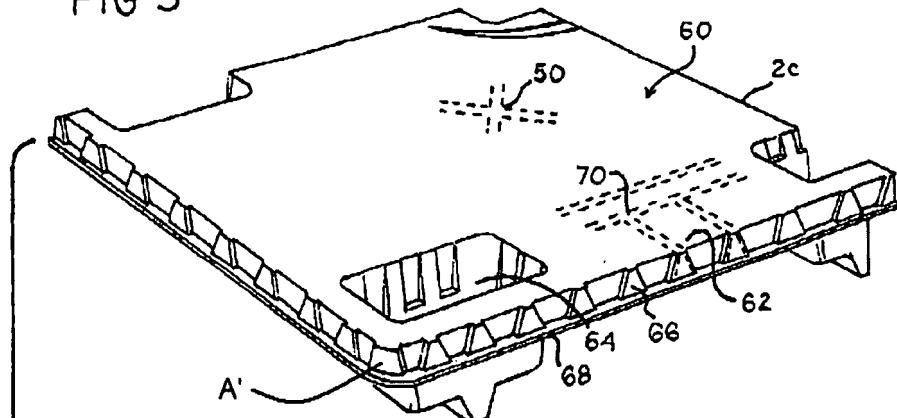


FIG 4

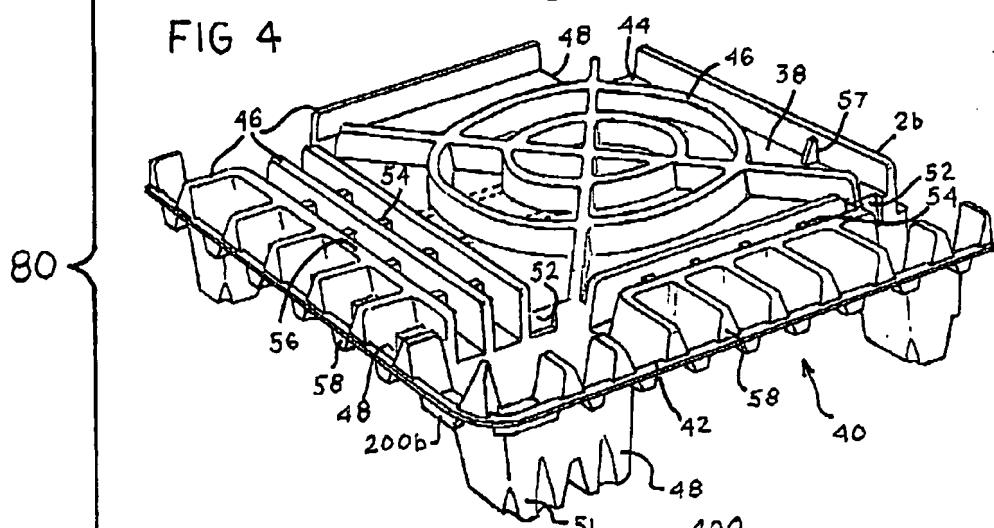
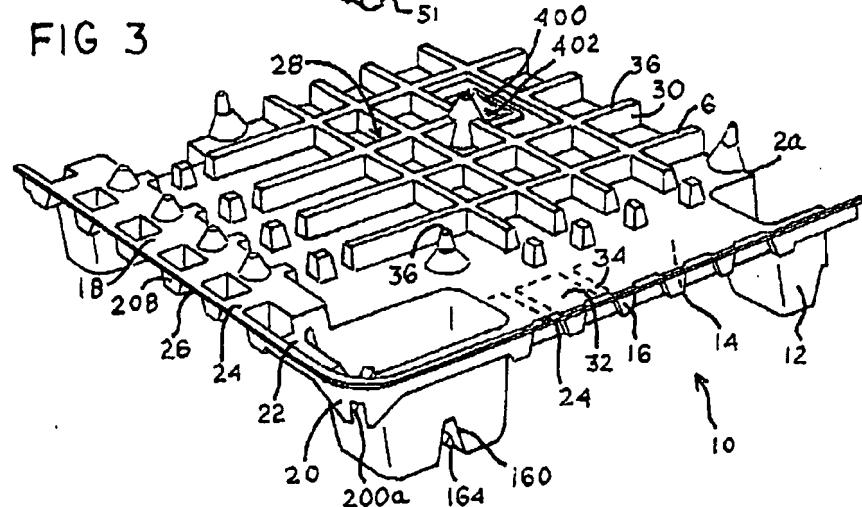


FIG 3



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3. The deck is made up of an upper deck section (60) with an upper panel (2c) having openings (64) and a lower deck section (10) having a lower panel (2a) with the supports (12) thereon. Regarding claim 5, 11, and 12, the triangular projection (A') has an upper surface flush with the upper surface of the deck. Regarding claim 6 and 14, the projection (200a) is used to hold shirk wrap to hold goods on the pallet (Page 9, paragraph 86). Regarding claim 10, the triangular projection (A') does not extend past the side edges due to the other triangular projections, which define the side edge.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection. The previous 103 rejection of Breezer in view of Ishizuka has now been withdrawn base on applicant's arguments filed in the request for pre-appeal brief conference. A 102 rejection with the reference to Muirhead has been added and this action is made non-final.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA  
4/30/07

*Janet Wilkens*  
JANET M. WILKENS  
PRIMARY EXAMINER  
*Art 3637*